Office of the State Appellate Defender

Illinois Criminal Law Digest

March 2015

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Except where a Supreme Court rule provides for an interlocutory appeal, the Appellate Court only has jurisdiction to review final judgments. In criminal cases, the final judgment is the sentence. Similarly, in juvenile cases, the final judgment is the dispositional order. The Appellate Court held that an order of continuance under supervision entered after a finding of delinquency in a juvenile case was not a final judgment.

The trial court may terminate juvenile supervision at any time, and may also vacate the finding of delinquency, if warranted by the conduct of the minor and the ends of justice. Under these circumstances, there was no final judgment providing the Appellate Court with jurisdiction.

Defendant's appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

BURGLARY & RESIDENTIAL BURGLARY

§8-5

People v. Murphy, 2015 IL App (4th) 130265 (No. 4-13-0265, 3/18/15)

A person commits burglary when he enters a building with the intent to commit a theft. 720 ILCS 5/19-1(a). As relevant here, a person commits theft when he obtains or exerts control over stolen property knowing or reasonably believing it is stolen, and he either (a) intends to permanently deprive the owner of its use or benefit, or (b) uses the property in a manner that deprives the owner of its use or benefit. 720 ILCS 6/16-1(a). The intent to permanently deprive the owner of his property is generally inferred when the person takes the property.

Defendant purchased stolen property "on the street," and admitted that he knew or at least strongly suspected the property was stolen. He then took the property to a pawn shop and pawned it in exchange for money. Defendant was convicted of burglary based on the State's theory that he committed burglary by entering the pawn shop with the intent to commit a theft. According to the State, the theft occurred inside the pawn shop because, although defendant had taken control of the property prior to entering

the pawn shop, he permanently deprived the owner of his property through the act of pawning it inside the pawn shop.

The Appellate Court reversed defendant's conviction. It held that defendant obtained control over the property knowing it was stolen when he purchased it on the street and thus the theft had already occurred before defendant entered the pawn shop. Accordingly, defendant did not enter the pawn shop with the intent to commit a theft.

The dissent would have affirmed the burglary conviction since the burglary was only complete when defendant acted to permanently deprive the owner of his property by pawning it; it was not complete when defendant merely obtained control over the property by purchasing it on the street.

(Defendant was represented by former Assistant Defender Gary Peterson, Springfield.)

COLLATERAL REMEDIES

§9-2(a)

People v. Donley, 2015 IL App (4th) 130223 (Nos. 4-13-0223, 4-13-0617 cons., 3/26/15)

The rule of **People v. Laugher**, 233 Ill. 2d 318 (2009) (holding that a trial court may not dismiss a 2-1401 petition before the expiration of the 30-day period in which the State may answer the petition) does not apply to successive 2-1401 petitions. The trial court's dismissal of defendant's successive 2-1401 petition before 30 days had passed was affirmed.

(Defendant was represented by Assistant Defender Mark Fisher, Ottawa.)

COUNSEL

§13-3(c)

People v. McClinton, 2015 IL App (3d) 130109 (No. 3-13-0109, 3/5/15)

1. 725 ILCS 5/113-3.1(a) authorizes the trial court to order payment of a "reasonable sum" as reimbursement to the county or State for the cost of representation provided by appointed counsel. Either the State or the court may move for a hearing

to determine defendant's ability to pay the reimbursement. The hearing may take place any time after the appointment of counsel but must occur no later than 90 days after entry of a final judgment disposing of the case.

Due process requires that the trial court give notice of the hearing, and defendant must be permitted an opportunity to present evidence regarding ability to pay and any other relevant circumstances. The hearing must focus on the costs of representation, the defendant's financial circumstances, and defendant's foreseeable ability to pay. The court must consider the assets and liabilities affidavit filed for appointment of counsel. The defendant does not waive his due process right to the procedural safeguards provided by §113-3.1 by failing to object when those safeguards are not met.

2. Here, the trial court erred by failing to give defendant notice of the hearing and by not affording defendant an opportunity to present evidence concerning his ability to pay. The State moved that defendant be ordered to pay $2,958 for appointed counsel services, and asserted without any supporting facts that defendant was able to pay. At sentencing, defendant stated that he was physically capable of working and hoped to take advantage of educational and training programs in prison. The trial court found that defendant could work and ordered that he pay $2,958 for appointed counsel. The court did not question defendant about his ability to pay or offer to allow him to present evidence.

The court noted that where the trial court provides "some sort of hearing" within 90 days after the entry of final judgement, the cause may be remanded for a proper hearing on appointed counsel reimbursement. **People v. Somers**, 2013 IL 114054. The court concluded that the trial judge's actions constituted "some sort of hearing" in light of the purpose of §113-3.1 to have qualified defendants reimburse the county or State for appointed counsel services, and remanded the cause for a new reimbursement hearing.

(Defendant was represented by Assistant Defender Bryon Kohut, Ottawa.)

DISORDERLY, ESCAPE, RESISTING & OBSTRUCTING OFFENSES

§16-1(a)

People v. Moreno, 2015 IL App (3rd) 130119 (No. 3-13-0119, 3/25/15)

1. Reckless discharge of a firearm is committed where a person discharges a firearm in a reckless manner and endangers the bodily safety of an individual. 720 ILCS 5/24-1.5(a). A person acts in a reckless manner when he or she consciously disregards a substantial and unjustifiable risk and that disregard constitutes a gross deviation

from the standard of care that a reasonable person would exercise in the situation. 720 ILCS 5/4-6.

Thus, under the plain meaning of the statute the offense of reckless discharge of a firearm requires that the defendant recklessly discharge a firearm and endanger the bodily safety of an individual. The court concluded that the act of firing a .22 caliber pistol toward the ground is not *per se* reckless. In the course of its holding, the court noted testimony by one of the State's witnesses that a dirt pile is utilized at the Illinois State Police headquarters to absorb bullets fired at the range and that defendant fired into a grassy dirt area.

In addition, defendant did not engage in activity that was likely to cause death or bodily harm where at the time he fired live and blank rounds into the ground the other partygoers were behind him, "reducing their chances of being hit by a potential ricochet to virtually zero."

Under these circumstances, the State failed to prove the elements of reckless discharge of a firearm. The conviction was reversed and the cause was remanded for the recalculation of fees on the remaining conviction of unlawful possession of a controlled substance.

2. In dissent, Justice Wright found that other persons were in the area when defendant was firing the shots, both blank and live rounds had been fired, and police officers testified that firing a gun into ground that has not been prepared is dangerous because stones, rocks or areas of clay can cause a ricochet in any direction. Because defendant was not shooting in a controlled setting where the risk of harm to others was minimized, the incident took place in a residential neighborhood during a party, and persons including children were in the residence or in close proximity, Justice Wright would have found that defendant's actions were reckless.

(Defendant was represented by Assistant Defender Lucas Walker, Ottawa.)

§16-2

People v. Jones, 2015 IL App (2d) 130387 (No. 2-13-0387, 3/17/15)

1. The offense of obstructing a peace officer occurs where one knowingly obstructs the performance by one known to be a peace office "of any authorized act within his official capacity." 720 ILCS 5/31-1(a). An "authorized act" is an act of a type that the officer is authorized to perform.

Generally, an officer who is attempting to make an arrest is performing an authorized act. However, an attempted arrest which violates the Fourth Amendment is not an "authorized act" for purposes of §31-1. In the absence of a warrant or exigent circumstances, the Fourth Amendment prohibits police from entering a private residence. The State bears the burden of demonstrating exigent circumstances necessitating a warrantless search or arrest.

2. Here, defendant conceded that the officer was authorized to knock on the door of an enclosed porch at defendant's house in order to investigate a report of a loud argument including the sound of things breaking. In addition, the officer observed defendant and a woman arguing on the porch and saw that defendant was extremely intoxicated and belligerent. Under these circumstances, the officer was authorized to step onto the porch to see whether defendant's companion was injured or needed assistance.

However, once defendant stated that there was no problem and asked the officer to leave, and the officer saw that the companion was not visibly injured and did not require assistance, the officer was obligated to respect defendant's request that he leave the premises. At that point the officer's authority to remain in the enclosed porch ended.

Where the officer remained on the porch and attempted to arrest defendant, his actions violated the Fourth Amendment. Thus, the attempt to make an arrest was not an "authorized act" for purposes of the obstructing an officer statute.

Defendant's conviction for obstructing a peace officer was reversed. The conviction for aggravated battery to a peace officer was affirmed.

(Defendant was represented by Deputy Defender Thomas Lilien, Elgin.)

EVIDENCE

§19-23(a)

People v. O'Donnell, 2015 IL App (4th) 130358 (No. 4-13-0358, 3/11/15)

The trial court improperly allowed a police officer to testify that she believed defendant, who was convicted of driving under the influence of alcohol, was lying when he stated he had not been driving at the time of the accident. The officer testified that whenever she asked defendant if he had been driving, he would look away or look down, and in her experience that was a sign of deception.

The Appellate Court held that such "human lie detector" evidence was not admissible. This type of evidence violated the fundamental rule that one witness should not be allowed to express an opinion about another witness's credibility. Accordingly, it was error to admit such evidence.

The court nevertheless affirmed defendant's conviction since he had not objected to the evidence at trial, and since the evidence at trial was not closely balanced, it did not constitute plain error.

(Defendant was represented by Supervisor Larry Bapst, Springfield.)

§19-23(b)

People v. Jones, 2015 IL App (1st) 121016 (No. 1-12-1016, 3/31/15)

1. Expert testimony is admissible if the witness is qualified, a foundation is established to show the basis for the expert's opinions, and the testimony will assist the trier of fact in understanding the evidence. An adequate foundation includes the requirement that the proponent show that the expert's testimony is based on reliable information of the type reasonably relied upon by experts in the particular field. The court concluded that whether or not firearm/toolmark analysis is a "hard" or "strict" science, Illinois courts have recognized "that the facts relied upon by experts in toolmark and firearm comparison are of a type reasonably relied upon by experts in the field in order to establish a proper foundation."

2. Here, there was an insufficient evidentiary foundation to admit an expert's opinion that a bullet had been fired from defendant's weapon. The expert testified that he compared test bullets fired from defendant's handgun with the bullet obtained from the decedent's body and concluded that there was sufficient "agreement" to conclude that all of the bullets had been fired from the same weapon. However, the witness conceded that the State Police Crime Lab does not use any specific standard to determine when bullets markings match, but instead relies on an "overall pattern based on class and individual characteristics." The witness stated there is no "set number of how many lines" that are required for a match and that not all of the "striations . . . have to line up" in order for there to be a match.

Noting that the expert "gave no reason at all to support his expert opinion that there was sufficient agreement and a match between the bullet recovered by the victim and defendant's gun," the court held that the evidentiary foundation was insufficient. The court noted that the expert gave no testimony concerning any individual characteristics of either the firearm or the bullet. In addition, where there is no evidence

to explain how an expert reached an opinion, the defense is deprived of any meaningful opportunity to challenge the expert's findings on cross-examination.

3. The admission of the improper expert testimony was not harmless beyond a reasonable doubt where there were no eyewitnesses, defendant's statements to police were consistent with his innocence, and the expert testimony placed the murder weapon in defendant's hands. "Other than perhaps DNA evidence, we can think of no evidence more prejudicial than evidence literally placing the murder weapon in a defendant's hands."

Defendant's conviction for first degree murder was reversed and the cause remanded for a new trial.

§19-24(a)

People v. Fields, 2015 IL App (3rd) 080829-C (No. 3-08-0829, 3/5/15)

725 ILCS 5/115-7.3 provides that in prosecutions for certain offenses, evidence of other instances in which defendant committed one of the specified offenses may be admitted to show defendant's propensity to commit such crimes. Where defendant was tried for predatory criminal sexual assault of a child, criminal sexual assault, and aggravated criminal sexual abuse, the State was allowed to introduce a certified copy of defendant's prior conviction for aggravated criminal sexual abuse against a different complainant and in a different county. The State was also allowed to present testimony by the complainant in the prior offense.

As a matter of first impression, the Appellate Court held that the conviction in this case must be reversed because after trial, the conviction in the case which was introduced as other crimes evidence was reversed. The court concluded that the reversal of the prior conviction constituted "new" evidence and required reversal because it undermined confidence in the outcome of the trial.

Noting that the instant case involved a credibility contest between defendant and the complainant and that there was no eyewitness testimony or physical evidence, the court concluded that the result of the trial would probably have been changed had the prior conviction been excluded. The court also noted that the facts of the cases were similar. Under these circumstances, admission of the underlying conviction was critical to the State's ability to secure a conviction.

The court rejected the State's argument that admission of the subsequently reversed conviction was harmless because in addition to presenting the certified

conviction, the State presented the testimony of the complainant describing the circumstances of the earlier conviction. The court noted that at trial the State argued that admission of the prior conviction was "extremely probative" on the issue of propensity although the complainant's testimony was also being admitted. The court stated that in light of such argument in the lower court it would not accept the State's claim on appeal that the prior conviction "did not truly matter."

Defendant's conviction was reversed and the cause remanded for a new trial.

(Defendant was represented by Assistant Defender Mark Fisher, Ottawa.)

§§19-24(a), 19-24(b)(1)

People v. Smith, 2015 IL App (4th) 130205 (No. 4-13-0205, 3/26/15)

1. Evidence of other crimes is generally inadmissible to demonstrate the defendant's propensity to commit the charged criminal conduct. Such evidence, while relevant, is excluded because it has too much probative value and to ensure that guilt and innocence is decided solely on the basis of the charged conduct and not because the defendant is a bad person.

However, evidence of other offenses may be used to demonstrate propensity under 725 ILCS 5/115-7.3 when the defendant is charged with one of several enumerated sex offenses and the probative value of the evidence is not substantially outweighed by its prejudicial effect. Among the factors to be considered when balancing the probative value and the prejudicial effect are: (1) the proximity in time to the charged offense, (2) the degree of factual similarity to the charged offense, and (3) other relevant facts and circumstances.

In addition, in order to be admitted under §115-7.3 the other offenses must have a threshold similarity to the charged conduct. However, because no two crimes are identical, the existence of some differences does not necessarily defeat admission of the evidence.

2. At defendant's trial for predatory criminal sexual assault of a child, aggravated criminal sexual abuse, and sexual exploitation of a child, the trial court found that §115-7.3 authorized the admission of evidence of similar conduct which defendant committed against other children some 12 to 18 years earlier. The Appellate Court found that the trial judge did not abuse its discretion by admitting the evidence, noting that the offenses were "remarkably similar" to the charges in this case and that the mere passage of time does not necessarily make the admission of prior offenses unduly prejudicial.

The court also noted that the trial court acted to limit the prejudice of the prior crime evidence when it barred testimony concerning prior conduct that was not similar to the allegations in the present case and twice read limiting instructions that were repeated by the State in closing argument. In addition, on cross-examination defense counsel was able to establish that no charges had been filed concerning the prior offenses. Finally, the State did not unduly emphasize the prior crimes evidence in closing argument.

Defendant's convictions were affirmed.

(Defendant was represented by Assistant Defender Daaron Kimmel, Springfield.)

GUILTY PLEAS

§24-8(b)(2)

People v. Willis, 2015 IL App (5th) 130020 (No. 5-13-0020, 3/6/15)

Under Supreme Court Rule 604(d), an attorney must file a certificate stating that he has: (1) consulted with defendant to ascertain his contentions of error in the sentence or guilty plea; (2) examined the trial court file and report of proceedings of the guilty plea; and (3) has made any amendments to the motion necessary to adequately present any defects in the proceedings. Counsel must strictly comply with the rule.

Defendant's counsel filed a 604(d) certificate stating that he had met with defendant (a man) regarding "her" contentions of error and "made amendments to the pleadings necessary for adequate presentation of any defects in the proceedings." During the hearing on the motion to withdraw guilty plea, counsel admitted that he had made no amendments to defendant's *pro se* motion, but asserted that the failure of the trial judge to recuse himself was an additional ground to allow withdrawal of the plea, but had not been presented in defendant's *pro se* motion.

The court held that the certificate filed by defendant's counsel was defective on its face and impeached by the record. First, the certificate inaccurately referred to defendant as "her." While the court observed that this error by itself might not have been sufficient to warrant remand, its combination with other error caused the court to seriously question whether counsel properly performed his duties.

Second, counsel asserted in the certificate that he had made all necessary amendments to the *pro se* petition. But he later admitted on the record that he had made

no amendments at all, and then stated that there were additional grounds to allow the motion to withdraw the guilty plea.

Finally, the certificate stated that counsel examined the "report of proceedings," but did not specify that he examined the report of proceedings of *the guilty plea*, as required by Rule 604(d).

The court remanded the case for further proceedings including strict compliance with Rule 604(d).

(Defendant was represented by Assistant Defender Richard Whitney, Mt. Vernon.)

JUVENILE PROCEEDINGS

§§33-6(f)(1), 33-7(b)

In re Michael D., 2015 IL App (1st) 143181 (No. 1-14-3181, 3/20/15)

1. The Juvenile Court Act provides for three distinct stages of a juvenile delinquency proceeding. 705 ILCS 405/5-651. In the first stage (the findings stage), the court decides whether the minor is guilty of the charged offense and thus should be adjudged delinquent. A finding of guilt is the equivalent of a finding of delinquency. In the second stage (the adjudication stage), the court decides whether to make the minor a ward of the court. In the third stage (the dispositional stage), the court determines the appropriate sentence.

2. Under an amendment to the Juvenile Court Act (effective 1/1/14), the court may now enter an order of continuance under supervision even after a first-stage finding of delinquency. 705 ILCS 405/5-615(1)(b). (Under the pre-amended act, the court could only enter a continuance under supervision before a finding of delinquency.) An order of continuance under supervision entered prior to a finding of delinquency was not a final appealable order. The issue in this case was whether such an order entered after a finding of delinquency was a final appealable order.

3. The Appellate Court held that a supervision order entered after a finding of delinquency was not a final appealable order. Except where a Supreme Court rule provides for an interlocutory appeal, the Appellate Court only has jurisdiction to review final judgments. In criminal cases, the final judgment is the sentence. Similarly, in juvenile cases, the final judgment is the dispositional order, entered after the third stage of juvenile proceedings.

An order of continuance under supervision is not a final dispositional order. The trial court may terminate juvenile supervision at any time, and may also vacate the finding of delinquency, if warranted by the conduct of the minor and the ends of justice. Under these circumstances, there was no final judgment providing the Appellate Court with jurisdiction.

Defendant's appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

PROSECUTOR

§41-8

People v. Williams, 2015 IL App (1st) 122745 (No. 1-12-2745, 3/31/15)

Although prosecutors have wide latitude in making closing arguments and are allowed to comment on the evidence and reasonable inferences from the evidence, they are not permitted to vouch for the credibility of a witness or use the credibility of their office to bolster testimony. By vouching for the credibility of a witness, the prosecutor improperly conveys two messages: (1) evidence not presented but known to the prosecutor supports the charges against defendant; and (2) the prosecutor's opinion carries the imprimatur of the Government and thus the jury should trust the Government's judgment rather than it's own view of the evidence.

Here, the primary evidence against defendant came from the testimony of a fellow gang member and co-defendant who turned State's evidence. During closing arguments, the State told the jury that when co-defendant agreed to cooperate, the State didn't just accept what he said, but instead did further investigation to check out and corroborate his version of events.

The Appellate Court held that this argument was reversible error. The court found it especially problematic since the message here was that the State would not put an untruthful witness on the stand. The prosecutor explicitly told the jury that the co-defendant's statement had been assessed before he testified and urged the jury to believe his version of events because the government had verified what he said. "With those comments, the testimony essentially became that of the prosecutor rather than that of the witness."

The case was reversed and remanded for a new trial.

(Defendant was represented by Assistant Defender Emily Filpi, Chicago.)

SEARCH & SEIZURE

§§44-1(b), 44-4(c)
People v. Lake, 2015 IL App (4th) 130072 (No. 4-13-0072, 3/16/15)

After observing defendant acting in a vaguely suspicious manner, a police officer approached defendant from behind and tapped on his shoulder, surprising and startling defendant, who turned around to look at the officer. The officer then moved directly in front of defendant and asked what his name was. When defendant told him his name, the officer recalled that another officer had informed him that defendant was known to carry a gun. The officer looked down and saw a four-inch bulge "at defendant's waist area." He then conducted a pat-down search of that area and recovered a gun.

Defendant argued that the gun should have been suppressed as the result of an illegal search and seizure. The Appellate Court disagreed, holding that the initial encounter (prior to the pat-down) was consensual and that after learning defendant's name and seeing the bulge in waist area, the officer had reasonable suspicion to conduct the pat-down itself.

1. The court first rejected defendant's argument that he was seized when the officer approached him from behind and tapped him on the shoulder, causing him to stop and submit to the officer's show of authority. The court held that the officer's tap was a minimally intrusive, non-offensive, and socially acceptable method of gaining another person's attention. It was not a demonstration of police authority indicative of a seizure protected by the Fourth Amendment.

2. The court next rejected defendant's argument that he was seized when the officer stepped in front of and questioned him. A person is seized when an officer restrains his liberty by means of physical force or show of authority. A seizure does not occur simply because an officer approaches a person and questions him. So long as a reasonable person would feel free to disregard the office and go about his business, the encounter is consensual.

Courts use four factors to determine whether a reasonable person would feel free to leave: (1) the threatening presence of several officers; (2) the display of a weapon; (3) physical touching by the officer; and (4) the use of language or tone of voice indicating compelled compliance.

Here, after tapping defendant on the shoulder, the officer stood facing defendant and, using a conversational tone, asked him to identify himself. Defendant willingly answered the question. With the exception of the tap on the shoulder, none of the four factors were present here. The officer was alone during the encounter, did not use

physical force to impede defendant, did not brandish a weapon, and did not convey verbally or non-verbally that defendant had to comply.

The court found that nothing in this exchange was anything more than a consensual encounter that did not implicate the Fourth Amendment. The court observed that although most citizens respond to police questioning, the fact that they do so without being told they are free to leave does not change the consensual nature of this contact.

3. Although the consensual encounter ended with the pat-down, the court found that the officer had by that point a reasonable basis to conduct the search. The officer knew that defendant was known to carry a gun and reasonably suspected that he was currently armed when he observed the bulge in defendant's waist area.

The court held that the search was proper.

(Defendant was represented by Assistant Defender Ryan Wilson, Springfield.)

§44-1(c)(2)

People v. Brown, 2015 IL App (1st) 140093 (No. 1-14-0093, 3/31/15)

In **Davis v. United States**, 131 S.Ct. 2419 (2011), the Supreme Court extended the good-faith exception to the exclusionary rule to situations where the police conduct a search relying on binding precedence that is subsequently overruled. In **Davis**, the police conducted a search of a vehicle's passenger compartment incident to an occupant's arrest. At the time of the search, there was binding authority allowing such a search, but subsequently the Supreme Court held that this type of search was unconstitutional. **Davis** held that the evidence recovered from the search was admissible under the good-faith exception to the exclusionary rule.

Here the police obtained a search warrant after they conducted a dog sniff on the curtilage of defendant's home. The only basis for the warrant was that the dog alerted to the presence of drugs in defendant's home. After the search had been conducted, the Supreme Court held that a dog sniff on the curtilage of a home was unconstitutional. **Florida v. Jardines**, 133 S.Ct. 1409 (2013). Since the only basis for the search warrant came from the now-illegal dog sniff, the trial court suppressed the evidence recovered during the search.

The State argued on appeal that the evidence should be admissible under the good-faith exception since dog sniffs on the curtilage of a home were entirely lawful under existing law at the time of the search. The Appellate Court rejected the State's argument

for two reasons. First, it held that **Davis** involved a situation where there was binding authority allowing the search at issue. In the present case, by contrast, there was no binding Illinois law allowing dog sniffs on the curtilage of a home at the time of the search.

Second, the Appellate Court predicted that the Illinois Supreme Court would not apply the good-faith exception in **Davis** to the present situation since it had previously declined to adopt a good-faith exception to searches based on statutes that were later declared unconstitutional. **People v. Krueger**, 175 Ill. 2d 60 (1996). Here the illegal search would be justified based solely on the officer's belief that the law would be extended to cover the search at issue. "Such a result would expand the good-faith exception beyond recognition."

The trial court's suppression of the evidence was affirmed.

SENTENCING

§45-7(c)

People v. Daniels, 2015 IL App (2d) 130517 (No. 2-13-0517, 3/6/15)

Under 725 ILCS 5/113-3.1(a), the trial court may order a defendant to pay a reasonable amount to reimburse the county or state for the cost of appointed counsel. But prior to ordering reimbursement, the court must conduct a hearing regarding defendant's financial resources.

Here, the trial court ordered defendant to pay a $750 public defender fee without conducting any hearing at all. The Appellate Court held that where the trial court fails to conduct any hearing at all, the proper remedy is to vacate the fee outright. If the court conducts an inadequate hearing, the remedy is to remand for a proper hearing.

Since the trial court conducted no hearing at all, the Appellate Court vacated defendant's fee outright.

(Defendant was represented by Assistant Defender Richard Harris, Elgin.)

§45-13
People v. Sumler, 2015 IL App (1st) 123381 (No. 1-12-3381, 3/26/15)

It was plain error under the second prong for the trial court to mistakenly believe that defendant was entitled to day-for-day good conduct credit when actually defendant was required to serve 85% of his sentence. Remanded for a new sentencing hearing.

(Defendant was represented by Assistant Defender Sean Collins-Stapleton, Chicago.)

SPEEDY TRIAL

§§47-1(b), 47-3
People v. Payne, 2015 IL App (2d) 120856 (No. 2-12-0856, 3/9/15)

The Interstate Agreement on Detainers is a uniform compact adopted by 48 states, including Illinois and Wisconsin. The agreement establishes the procedure for bringing a defendant imprisoned in one to trial on charges pending in another, and permits a defendant to request a final disposition of an untried charge. When a defendant makes such a request, he must be tried within 180 days after he has delivered to the prosecutor and the trial court written notice of his place of imprisonment and his request for a final disposition. The defendant must send a written notice of his request for final disposition to the prison officials, who in turn must promptly forward the request to the prosecutor and trial court. 730 ILCS 5/3-8-9, art. III.

Defendant was charged with various offenses in Illinois while he was serving a prison sentence in Wisconsin. The Illinois prosecutors received a letter from the Wisconsin prison officials which included a written request from defendant for a final disposition of the untried charges in Illinois. The letter also stated that it was "carbon copied" to the trial court in Illinois.

Defendant argued that they violated the detainer agreement by failing to bring him to trial within 180 days of the date the prosecutors received his request for a final disposition. The Appellate Court disagreed. It held that the request must actually be delivered to both the prosecutor *and* the trial court before the 180-day period begins. The record, however, only shows that the request was delivered to the prosecutors and mailed to the trial court. There was no showing that the request was actually delivered to the trial court. Consequently, there was no showing that the 180-day period began to run.

Defendant's convictions were affirmed.

(Defendant was represented by Supervisor Josette Skelnik, Elgin.)

THEFT AND OTHER PROPERTY OFFENSES

§49-2

People v. Murphy, 2015 IL App (4th) 130265 (No. 4-13-0265, 3/18/15)

A person commits burglary when he enters a building with the intent to commit a theft. 720 ILCS 5/19-1(a). As relevant here, a person commits theft when he obtains or exerts control over stolen property knowing or reasonably believing it is stolen, and he either (a) intends to permanently deprive the owner of its use or benefit, or (b) uses the property in a manner that deprives the owner of its use or benefit. 720 ILCS 6/16-1(a). The intent to permanently deprive the owner of his property is generally inferred when the person takes the property.

Defendant purchased stolen property "on the street," and admitted that he knew or at least strongly suspected the property was stolen. He then took the property to a pawn shop and pawned it in exchange for money. Defendant was convicted of burglary based on the State's theory that he committed burglary by entering the pawn shop with the intent to commit a theft. According to the State, the theft occurred inside the pawn shop because, although defendant had taken control of the property prior to entering the pawn shop, he permanently deprived the owner of his property through the act of pawning it inside the pawn shop.

The Appellate Court reversed defendant's conviction. It held that defendant obtained control over the property knowing it was stolen when he purchased it on the street and thus the theft had already occurred before defendant entered the pawn shop. Accordingly, defendant did not enter the pawn shop with the intent to commit a theft.

The dissent would have affirmed the burglary conviction since the burglary was only complete when defendant acted to permanently deprive the owner of his property by pawning it; it was not complete when defendant merely obtained control over the property by purchasing it on the street.

(Defendant was represented by former Assistant Defender Gary Peterson, Springfield.)

WAIVER - PLAIN ERROR - HARMLESS ERROR

§56-2(b)(5)(a)

People v. Sumler, 2015 IL App (1st) 123381 (No. 1-12-3381, 3/26/15)

It was plain error under the second prong for the trial court to mistakenly believe that defendant was entitled to day-for-day good conduct credit when actually defendant was required to serve 85% of his sentence. Remanded for a new sentencing hearing.

(Defendant was represented by Assistant Defender Sean Collins-Stapleton, Chicago.)